

ARIZONA HOUSE OF REPRESENTATIVES
Forty-eighth Legislature - Second Regular Session

MAJORITY CAUCUS CALENDAR

June 16, 2008

Bill Number	Short Title	Committee	Date	Action	
Committee on Commerce					
<u>SB 1410</u>	corporations and LLCs				
SPONSOR:	VERSCHOOR	COM	4/2	DP	(4-2-1-3-0)
Committee on Transportation					
<u>SB 1507</u>	state aviation fund.				
	(TRANS S/E: transportation projects; public-private development)				
SPONSOR:	VERSCHOOR	TRANS	4/10	DPA/SE	(5-3-1-1-0)



HOUSE OF REPRESENTATIVES

SB 1410

corporations and LLCs
Sponsor: Senator Verschoor

DP Committee on Commerce

X Caucus and COW

House Engrossed

SB1410 removes the requirement for domestic and foreign corporations, nonprofit corporations, and limited liability companies to file affidavits evidencing publication of certain documents. The bill also conforms some statutory language for limited liability companies to those already in existence for corporations.

History

The Arizona Corporation Commission (Commission) was established in the Arizona Constitution, and facilitates the incorporation of businesses and organizations, securities regulation and railroad/pipeline safety. The Commission has five commissioners who are elected to four-year terms. Ultimate responsibility for final decisions on granting or denying rate adjustments, enforcing safety and public service requirements, and approving securities matters rests with the Commissioners.

The Commission is organized into seven Divisions. The Corporations Division approves the filing all articles of incorporation for Arizona businesses; all articles of organization for limited liability companies; grants authority to foreign corporations to transact business in this state; propounds interrogatories when necessary to determine a company's lawful purpose; and, revokes the corporate charters of those corporations which choose to not comply with Arizona law.

There are several documents that must be delivered to the Commission in order to incorporate and conduct business in Arizona. These documents include articles of incorporation, organization, domestication, merger and amendment. Any significant changes to the articles in the form of amendments, mergers, consolidations, dissolutions or withdrawals are also filed with the Commission's Corporate Division.

In general, the entity seeking incorporation has within 60 days of Commission approval to publish (in a newspaper of general circulation in the county of the known place of business for three consecutive publications) an announcement of the filing; and, within 90 days of the approval, an affidavit evidencing such publication.

Corporations also must deliver a Certificate of Disclosure with the Commission. The Certificate of Disclosure must contain specific information about the principals of the company, including whether they have been convicted of felonies, securities fraud, and anti-trust, among others.

Provisions

Commission Duty to File a Document

- Requires the Commission to file a corporation's delivered document if 1) the Commission determines the document satisfies the requirements of Arizona laws on corporations and 2) the corporation filing the document is in good standing with regard to the filing of a certificate of good standing for both corporations and nonprofit corporations. Current law requires the Commission to file the document by stamping, endorsing or attaching the word "filed" on the original document.
- Allows the Commission to file a delivered document for a corporation that has filed either Articles of Dissolution or a document that is required to bring the corporation into good standing.
- Expands the requirement of the Commission to file an LLC's delivered document if the LLC is in good standing. Currently, the Commission is required to file the documents if they conform to statutory filing provisions and all required fees have been paid.
- Allows the Commission to file a document delivered for an LLC that is required to bring the corporation into good standing.

Corporations

- Removes the requirement to provide a *social security number* in the Certificate of Disclosure for persons who have been convicted of crimes or are the subject of judicial action. Current law requires the Certificate in such instances to include all of the following: identification of the person, including present full name; all prior names and aliases, including full birth name; present home address; all prior addresses within the preceding seven years; date and location of birth; and, social security number.
- Removes *charter revocation* from the list of requirements that would prompt a brief statement of disclosure to be included with the delivery of a Certificate of Disclosure. Currently a brief statement of disclosure is required when a person, who at the time of delivery, has been an officer, director, trustee, incorporator, and person controlling or holding more than 20 percent of the issued and outstanding common shares or 20 percent of any other proprietary, beneficial, or membership interest in the corporation; and, who have served in such capacity or held 20 percent interest in any other corporation's bankruptcy, receivership, or *charter revocation*.
- Makes permissive the filing of the affidavits evidencing the publication of the following documents: articles of domestication; articles of amendment; articles of reinstatement; amendment to the articles of incorporation for purposes of reorganization; and, articles of merger or share exchange.
- Removes the failure to file affidavits of publication as one of the grounds for the Commission to commence administrative proceedings to dissolve a corporation. Further, permits a corporation to file any other appropriate evidence of publication with the Commission after receiving a notice of intent to commence a dissolution proceeding for failure to publish a document.

- Removes affidavit as a required document when an officer or other representative of the corporation makes misrepresentations of material matter that would constitute grounds for the Commission to commence dissolution proceedings.

Foreign Corporations

- Makes permissive the filing of an affidavit evidencing the publication of application to conduct business in Arizona.
- Removes Commission's receipt of an affidavit evidencing the publication of an application to withdrawal as a condition for considering an application of withdrawal complete. Current law stipulates that an application of withdrawal is incomplete until the Commission receives all fees, penalties, and costs, as well as an affidavit of publication of the withdrawal.
- Removes the failure to file affidavits of publication as one of the grounds for the Commission to commence administrative proceedings to revoke a foreign corporation. Further, permits a foreign corporation to file any other appropriate evidence of publication with the Commission after receiving a notice of intent to commence a revocation proceeding for failure to publish a document.
- Removes affidavit as a required document when an officer or other representative of the foreign corporation makes misrepresentations of material matter that would constitute grounds for the Commission to commence revocation proceedings.

Nonprofit Corporations

- Removes the requirement to provide a *social security number* in the Certificate of Disclosure for persons who have been convicted of crimes or are the subject of judicial action.
- Removes *charter revocation* from the list of requirements that would prompt a brief statement of disclosure included with the delivery of a Certificate of Disclosure.
- Makes permissive the filing of the affidavits evidencing the publication of the following documents: articles of incorporation; articles of domestication; articles of amendment; restated articles of incorporation; amendment to the articles of incorporation for purposes of reorganization; articles of merger or membership exchange; articles of merger or share exchange; and articles of dissolution.
- Removes the failure to file affidavits of publication as one of the grounds for the Commission to commence administrative proceedings to dissolve a nonprofit corporation. Further, permits a nonprofit corporation to file any other appropriate evidence of publication with the Commission after receiving a notice of intent to commence a dissolution proceeding for failure to publish a document.
- Removes affidavit as a required document when an officer or other representative of the nonprofit corporation makes misrepresentations of material matter that would constitute grounds for the Commission to commence dissolution proceedings.
- Removes a statement of financial condition as one of the included requirements in a nonprofit corporation's annual report to the Commission.

Foreign Nonprofit Corporations

- Makes permissive the filing of an affidavit evidencing the publication of the application to conduct affairs in Arizona.
- Removes Commission's receipt of an affidavit evidencing the publication of an application to withdrawal as a condition for considering an application of withdrawal complete.
- Removes the failure to file affidavits of publication as one of the grounds for the Commission to commence administrative proceedings to revoke a foreign nonprofit corporation. Further, permits a foreign nonprofit corporation to file any other appropriate evidence of publication with the Commission after receiving a notice of intent to commence a revocation proceeding for failure to publish a document.
- Removes affidavit as a required document when an officer or other representative of the foreign nonprofit corporation makes misrepresentations of material matter that would constitute grounds for the Commission to commence revocation proceedings.
- Removes a statement of financial condition as one of the included requirements in a foreign nonprofit corporation's annual report to the Commission.

Limited Partnerships

- For the purpose of process on a limited partnership, modifies the requirement of a specified agent to include a domestic or foreign limited liability company. Currently an agent can be an individual Arizona resident or a foreign or domestic corporation.

Limited Liability Companies (LLCs)

- Modifies the definition of *member* to include a noneconomic member of an LLC who 1) does not own a member's interest in the company, 2) does not have an obligation to contribute capital to the company, 3) does not have the right to receive profit distribution or the obligation to contribute to the losses of the company, and 4) may have voting and other rights and privileges according to the articles of organization or operating agreement.
- Permits a parent LLC and its subsidiary to be formed concurrently.
- Removes the requirements that an LLC's article of termination state there are no outstanding debts, obligations, or liabilities of the company (or adequate provisions have been made for them), and that there is no pending litigation against the company (or adequate provisions have been made for the satisfaction of any judgment, order, or decree against the company). In addition to those requirements, current law stipulates the LLC's article of termination include the name of the LLC and a statement that all known properties and assets are applied and distributed according to Arizona law.
- With regard to an LLC at the time of termination, removes the designation of a member as a trustee for the LLC's members and creditors. Further, clarifies that a manager or member in office at the time an LLC terminates may take statutorily permissible actions for the purpose of winding up and liquidating the business and affairs of the LLC.
- Removes the failure to file affidavits of publication as one of the grounds for the Commission to commence administrative proceedings to dissolve an LLC.

SB 1410

- Stipulates that Commission must release the name of an administratively-dissolved LLC for use (by another company or as a registered trademark) if the LLC has not applied for reinstatement within six months after the effective date of the dissolution.
- Requires that an administratively-dissolved LLC that applies for reinstatement to file an article of amendment with the application that specifies the LLC's new name.

Fictitious Names

- Exempts a person or corporation, from the section of law pertaining to the certification requirements of companies doing business under other names, that has filed a trade name certificate with the Secretary of State or obtained authorization from the Commission to conduct business as a foreign corporation using a particular name.



HOUSE OF REPRESENTATIVES

SB 1507

state aviation fund.

Sponsors: Senator Verschoor (with permission of committee on Rules)

S/E
DPA Committee on Transportation

X Caucus and COW

House Engrossed

Senate Bill 1507 makes changes to the State Aviation Fund grants and loan process.

The proposed strike-everything amendment to SB 1507 requires the Arizona Department of Transportation (ADOT), in cooperation with regional planning agencies, metropolitan planning organizations and councils of governments, to establish the Arizona New Directions in Innovation Program, and requires ADOT to develop an expedited transportation project delivery process using public-private partnership contracting, financing, construction operation maintenance and delivery methods.

The amendment sunsets the program in 2018.

In addition, the proposed amendment makes changes to the Statewide Transportation Acceleration Needs Account (STAN) to allow the fund to pay for interest costs for eligible transportation projects and also makes changes to the State Aviation Fund grants and loan process.

Provisions:

Statewide Transportation Acceleration Needs Account

- Allows expenditure of monies in the STAN I account to pay for interest costs resulting from bonds, loans notes or advances issued to or on behalf of a city or county.

State Aviation Fund

- Specifies that the combined total of grants and loans awarded to any one airport in any fiscal year shall not exceed ten percent of the average annual revenue that the fund received for the past three years.
- Allows the STB, to award an additional grant or loan of up to five percent in the same fiscal year to a specific airport based on the average annual revenue that the fund received for the past three years.
- Modifies the definition of "publicly owned and operated airport facility" to include airports on Indian Nation land located in this state.

Public Private Partnerships

- Requires the Department to establish the Arizona New Directions in Innovation Program (Program).
- Specifies that the Program does not apply to any transportation or transit project in ADOT's highway construction plan or the transportation projects in a county's regional transportation plan as of the effective date of the act.

Director's Duties

- Adds that the Director annually present a plan to the Transportation Board to reduce congestion through the use of bypass routes developed through a public-private partnership to relieve congestion.
- Provides the Director with rule making authority related to partnership agreements with private entities or other government units.
- Allows the Director to enter into agreements with private or government partners for operation, improvement or construction of public transit systems.

Public-Private Partnership Proposals

- Allows ADOT to solicit proposals for transportation projects from private entities or government units.
- Requires ADOT to accept and evaluate unsolicited proposals meeting preparation and submission requirements.
- Requires proposers to include an executive summary with the proposal for disclosure and release to the public, but exempts certain confidential information from the executive summary.
- Allows confidential or proprietary information to be identified and exempted from disclosure under the state's public records law.
- Exempts ADOT from the procurement code, but specifies selection processes.
- Allows ADOT to charge an administrative fee for proposals under certain conditions.
- Provides ADOT with 90 days to undertake a preliminary evaluation of an unsolicited proposal.
- Requires evaluation of proposals in cooperation with the regional planning agency or council of governments of the affected jurisdiction.
- Allows ADOT and government units to spend monies to evaluate proposals.
- Delineates the process for ADOT must use to allow for competing proposals when considering selection of an unsolicited proposal.
- Clarifies that ADOT must work in cooperation with affected jurisdictions if selecting potential projects for presentation to the Board.

Public-Private Agreements

- Requires the Board to select proposals in cooperation with the regional planning agency or council of governments of the affected jurisdiction.
- Mandates that the Joint Legislative Budget Committee review a proposal before the Board enters into an agreement
- Requires the Board to approve a selection by resolution allowing ADOT to enter into an agreement for a public-private initiative or partnership.
- Specifies the content of the agreement.

- Requires the agreement to address the availability of free and reasonable alternative routes to a toll facility.
- Specifies the private entity does not have a property interest, but a leasehold interest.
- Requires agreements to include security to cover costs incurred by contractors, subcontractors and laborers.
- Requires ADOT to consider whether to implement competitive procedures for subcontractors before presenting proposed agreements to the Board.
- Exempts specified communications from disclosure during the course of negotiating agreements.
- Specifies communications or documents submitted to the Board in connection with approval of a transportation project and the terms of a final agreement are subject to disclosure.
- Agreements cannot exceed a fifty year term, but may be extended.
- Allows other government units to use a similar process subject to approval by ADOT.
- Clarifies the state can enter into agreements with any public sector partner for public-private partnerships.
- Requires ADOT to establish standards and assess responsibility for the condition of a facility prior to reversion to the state.

Eminent Domain

- The state may use its eminent domain powers to acquire property for transportation projects regardless of whether the state will own the property or lease the property in connection with the public-private partnership project.
- The state is prohibited from relinquishing its power of eminent domain.

Material Default

- Allows ADOT to take over a transportation facility if the operator is in material default.
- Allows ADOT to terminate the agreement in the case of a material default.
- Specifies that if ADOT assumes control of a facility, the department shall collect and pay any revenues subject to lien to satisfy obligations.
- Allows ADOT to develop and operate the facility, impose user fees and comply with service contracts in a case of material default.
- Permits ADOT to solicit proposals for maintenance and operation of a defaulted facility.

Facility Reversion

- Specifies that if an agreement terminates, the authority and duties of the operator cease, and the transportation facility reverts to ADOT and is dedicated to the department for public use.

Reports to the State Transportation Board

- Requires ADOT to report to the Board at least twice each year regarding transportation projects related to public-private partnerships.

- States that the report must contain information related to expenditures for evaluations of transportation projects related to public-private partnerships; agreements entered into by the Department and financing mechanisms being used for transportation projects.

Police Powers

- Specifies that any Arizona law enforcement officer has jurisdiction within the limits of public-private transportation facilities and have access to the facility at any time for the purpose of exercising police powers.
- Applies state traffic laws, and as applicable, local traffic laws to public-private facilities.
- Specifies that existing penalties for traffic violations apply to public-private facilities.

Funding and Financing

- Allows the use of any lawful funding source, including federal, state and local revenues to develop transportation facilities under a public-private partnership agreement.
- Allows the use of user fees, tolls, fares, charges, lease proceeds, rents, proceeds from the sale of development rights and other revenue sources.
- Allows the Department to issue bonds based on revenues generated by facilities developed through public-private partnerships.
- Specifies that the bonds are not general obligations of the state.
- Delineates lawful expenditure of bond proceeds.
- Allows monies the Highway Expansion and Extension Loan fund to be used for security on behalf of private entities.
- Establishes the State Transportation Enterprise Fund (STEF).
- Specifies revenues for deposit in the STEF.
- States that monies in the STEF shall be used as provided in an agreement applicable to the public-private transportation project.

Taxes and Immunity

- States that public-private developed transportation facilities and tangible personal property exclusively used with the facility that is owned by ADOT or conveyed to an operator, or provided by an operator on behalf of ADOT is exempt from all ad valorem property taxes and special assessments levied against property by the state or any political subdivision of the state.
- Specifies that the state or any officer or employee of the state is limiting or waiving sovereign immunity.

Amendments

Transportation

- The strike-everything amendment was adopted.